(2) (2)

Nos. 00-632 and 00-633

In The Supreme Court of the United States

Supreme Court, U.S.
FILED
NOV 8 2000
CLERK

STATE OF MICHIGAN, *et al.*,
Petitioners,

vs.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

STATES OF OHIO AND INDIANA,
Petitioners,

vs.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF RESPONDENTS COUNCIL OF INDUSTRIAL BOILER OWNERS, WEST VIRGINIA MANUFACTURERS ASSOCIATION. MICHIGAN MANUFACTURERS ASSOCIATION AND VIRGINIA MANUFACTURERS ASSOCIATION IN SUPPORT OF PETITION

William C. Porth
Kim Brown Poland
Robert E. Lannan, II
ROBINSON & MCELWEE, L.L.P.
600 United Center

Post Office Box 1791
Charleston, WV 25326
(304) 347-8248

Counsel for Respondent
West Virginia Manufacturers Association

Gene E. Godley
(COUNSEL OF RECORD)
Scott H. Segal
Lisa M. Jaeger
BRACEWELL & PATTERSON, L.L.P.
2000 K Street, N.W., Ste 500
Washington, D.C. 20006-1872
(202) 828-5800

Counsel for Respondent
Council of Industrial Boiler Owners

Additional Counsel listed on inside cover

6 pp

Thomas E. Knauer
WILLIAMS, MULLEN,
CLARK & DOBBINS
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218-1320
(804) 783-6913

Counsel for Respondent
Virginia Manufacturers Association

Rhonda Lee Ross
WARNER NORCROSS
& JUDD, L.L.P.
2000 Town Center
Suite 2700
Southfield, MI 48075-1318
(248) 784-5088

Counsel for Respondent
Michigan Manufacturers Association

Nos. 00-632 and 00-633

In The Supreme Court of the United States

STATE OF MICHIGAN, *et al.*,
Petitioners,

vs.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

STATES OF OHIO AND INDIANA,
Petitioners,

vs.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

BRIEF OF RESPONDENTS COUNCIL OF INDUSTRIAL BOILER OWNERS, WEST VIRGINIA MANUFACTURERS ASSOCIATION, MICHIGAN MANUFACTURERS ASSOCIATION AND VIRGINIA MANUFACTURERS ASSOCIATION IN SUPPORT OF PETITION

DISCLOSURE STATEMENT

Pursuant to United States Supreme Court Rule 29.6, parties joining this brief have no parent corporations nor are owned by 10% or more by a publicly held company.

STATEMENT

Respondents Council of Industrial Boiler Owners ("CIBO"), West Virginia Manufacturers Association ("WVMA"), Michigan Manufacturers Association ("MMA"), and Virginia Manufacturers Association (" VMA") support the petition of the States of Michigan, West Virginia, South

Carolina, Alabama and the Commonwealth of Virginia (No. 00-662) and the petition of the States of Ohio and Indiana (No. 00-663) for a writ of certiorari to review the ruling of the United States Court of Appeals for the District of Columbia Circuit in *Michigan v. United States Environmental Protection Agency,* 213 F.3d 663 (D.C. Cir. 2000). Some of the Respondents have filed a brief in support of the petition challenging the same ruling filed by Appalachian Power Company, *et al.* (No. 00-445).

As Respondents pointed out in their brief supporting the earlier-filed petition, the Environmental Protection Agency ("EPA") rule at issue in these cases effectively charges industrial sources with violations of Section 110 the Clean Air Act, 42 U.S.C. §7410(a)(2)(D), yet the basis for the violations is an extra-statutory construct that conflicts with longstanding precedent. Respondents are concerned that if the ruling in *Michigan v. EPA* stands, EPA will be encouraged to ignore, where expedient, the plain meaning of the Clean Air Act and impose its own "short-cut" interpretation of the statute. Likewise, Respondents are concerned that the ruling left standing will permit EPA to bypass congressional directives regarding when and how regulatory costs should be considered, and impose instead the agency's own judgment. Further, Respondents agree with State Petitioners that EPA's approach has deprived states of the prerogative to determine how to achieve any necessary emissions reductions.

The rule significantly impacts the industrial sector in a manner that Respondents believe Congress did not intend by imposing a burden to reduce emissions based on the cost of controls, rather than the actual emissions contribution of the source or other sources in a given state to another state.

For these reasons and for those expressed in Respondents' brief filed in support of Petition No. 00-445, Respondents urge this Court to grant certiorari in these cases.

Respectfully submitted,

Gene E. Godley
Counsel of Record
Scott H. Segal
Lisa M. Jaeger
BRACEWELL & PATTERSON, L.L.P.
2000 K Street, N.W., Suite 500
Washington, D.C. 20006-1872
(202) 828-5800

Counsel for Respondent
Council of Industrial Boiler Owners

William C. Porth
Kim Brown Poland
Robert E. Lannan, II
ROBINSON & MCELWEE, L.L.P.
600 United Center
Post Office Box 1791
Charleston, WV 25326
(304) 347-8248

Counsel for Respondent
West Virginia Manufacturers Association

Rhonda L. Ross
WARNER NORCROSS & JUDD L.L.P.
2000 Town Center, Suite 2700
Southfield, MI 48075-1318
(248) 784-5088

Counsel for Respondent
Michigan Manufacturers Association

Thomas E. Knauer
WILLIAMS, MULLEN, CLARK & DOBBINS
1021 East Cary Street
P.O. Box 1320
Richmond, VA 23218-1320
(804) 783-6913

Counsel for Respondent
Virginia Manufacturers Association

Dated: November 8, 2000